

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Notary Public
Commission of Mark W. Howes
License No. 6178400

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson at 9:30 a.m. on May 27, 1998, at the Office of Administrative Hearings in Minneapolis, Minnesota. David M. Aafedt, Assistant Attorney General, Suite 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Respondent, Mark W. Howes, 1609 West County Rd. 42, # 184, Burnsville, Minnesota 55306. The record in this matter closed on June 2, 1998, upon receipt of additional materials from the Department verifying service of the Second Prehearing Order on Mr. Howes and the Commissioner of Commerce.

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact David B. Gruenes, Commissioner, Minnesota Department of Commerce, 133 E. 7th Street, St. Paul, Minnesota 55101, telephone (612) 297-3238, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issues in this contested case proceeding are whether or not the Respondent failed to determine either from personal knowledge or from satisfactory evidence that a signature on a document was that of the person appearing before the officer and named therein, in violation of Minn. Stat. § 358.42 (1997); and, if so, whether the Respondent's notary commission should be subject to discipline and/or the Respondent should be subject to civil penalties pursuant to Minn. Stat. § 359.12 and 45.027, subd. 6 and 7 (1997).

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Hearing in this matter was served upon the Respondent, Mark W. Howes, by certified mail on February 3, 1998, at 1609 West County Road 42, # 184, Burnsville, Minnesota 55306. This was the Respondent's last known address on file with the Department of Commerce. The mailing was not claimed by the Respondent or by anyone on his behalf.

2. The Notice of and Order for Hearing was then served upon the Respondent by leaving a copy with the Commissioner of Commerce pursuant to Minn. Stat. § 45.028.

3. The Notice of and Order for Hearing mailed to the Respondent included the following notice in bold type:

If Respondent Howes, without the prior consent of the Judge, fails to attend or otherwise appear at the hearing in this matter, or at any prehearing conference or settlement conference in this matter or fails to comply with any interlocutory orders of the Judge, Respondent shall be deemed default and the allegations or issues set forth herein may be deemed proved and Respondent's certificate may be revoked or suspended or Respondent may be censured and/or civil penalties may be imposed on Respondent without further proceedings.

(Emphasis in original.)

4. The Respondent did not appear at the hearing scheduled for February 11, 1998, or have an appearance made on his behalf. The Department requested entry of a default ruling.

5. On February 24, 1998, the Administrative Law Judge issued a First Prehearing Order in which she noted that the Notice of and Order for Hearing had not been served on the Respondent thirty days prior to the hearing, in accordance with Minn. R. 1400.5600. As a result, the Department's request for a default ruling was denied, and the hearing was continued to April 14, 1998. The First Prehearing Order also directed counsel for the Department of Commerce to ensure that the First Prehearing Order was served on the Commissioner by March 14, 1998, in accordance with Minn. Stat. § 45.028.

6. The Respondent did not appear at the hearing scheduled for April 14, 1998, or have an appearance made on his behalf. Counsel for the Department informed the Administrative Law Judge at that time that, due to his assignment in another area of the Attorney General's Office during the past several months, he was unaware of and had not complied with the provision in the First Prehearing Order requiring service on the

Commissioner of Commerce by March 14, 1998. Accordingly, the Administrative Law Judge issued a Second Prehearing Order that continued the hearing to Wednesday, May 27, 1998, at the Office of Administrative Hearings. That Prehearing Order also required service of the Order on the Commissioner by April 27, 1998.

7. The Respondent did not appear at the hearing scheduled for May 27, 1998, or have an appearance made on his behalf. He did not request a continuance or any other relief prior to the hearing.

8. The Department served the Commissioner of Commerce with the Second Prehearing Order on April 22, 1998, and also sent a copy of the Second Prehearing Order to the Respondent's last known address.

9. Because the Respondent failed to appear at the hearing in this matter, he is in default. Pursuant to Minn. R. 1400.6000 (1995), the allegations contained in the Notice of and Order for Hearing are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 359.12 (1996).

2. The Department has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

3. The Respondent, having made no appearance at the hearing, and not requesting any continuance or relief, is in default. Pursuant to Minn. Stat. § 1400.6000, the allegations contained in the Notice of and Order for Hearing are hereby taken as true.

4. The conduct described in the Notice of Hearing constitutes a violation of Minn. Stat. §§ 358.42 and 359.12 (1996). Accordingly, the Respondent's notary commission is subject to discipline and/or the Respondent is subject to civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 and 7, and 359.12 (1996).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: that appropriate disciplinary action be taken against the notary commission of Mark W. Howes.

Dated this _____ day of June, 1998

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Default.